



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

HD:hd  
Docket No: 04398-99  
15 November 2000

CAPT [REDACTED] II USNR  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Captain [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 13 December 1999 and 3 February 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion dated 3 February 2000. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1610  
PERS-311  
13 December 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: CDR [REDACTED], USNR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. As requested by PERS-86, we have reviewed the member's record concerning his fitness reports for the periods 18 April 1997 to 30 September 1997 and 1 October 1997 to 30 September 1998.

2. Based on our review of the material provided, we find the following:

a. The fitness report for the period 1 October 1996 to 17 April 1997 signed by [REDACTED] properly reflected in the member's digitized record and the member's Officer Summary Record (OSR).

b. The fitness report for the period 18 April 1997 to 30 September 1997 signed by [REDACTED] was filed in the member's digitized record and reflected the proper trait grades, but his OSR revealed no trait grades. The OSR has been corrected to reflect the assigned grades.

c. Further review of the member's headquarters record revealed the fitness report for the period 1 October 1997 to 30 September 1998 was received, accepted, and is properly reflected in the member's digitized record and his OSR.

d. The member's digitized record and the member's OSR reflects the receipt of the Army Achievement Medal.

3. The member's headquarters record is correct.

[REDACTED]  
Head, Performance  
Evaluation Branch



**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000**

5420  
PERS-86

03 FEB 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
[REDACTED]

Encl: (1) BCNR File 04398-99 w/Service record

1. We are returning enclosure (1) with the following observations and the recommendation that Captain [REDACTED] petition be disapproved.
2. Captain [REDACTED] was properly considered by the FY-99 and FY-00 Naval Reserve Captain Line Promotion Selection Boards. The FY-99 board did not select him. Captain [REDACTED] was selected by the FY-00 board and has been promoted since he initiated his request.
3. Captain [REDACTED] communicated in writing with the FY-99 selection board. His correspondence was delivered on time to the selection board in accordance with applicable laws and regulations.
4. Captain [REDACTED] bases his request on the claim that the selection board did not have a complete record for review. The record was essentially complete when the board reviewed it, and the correspondence he sent to the board was delivered prior to the date the board convened. The selection board was in possession of all documents Captain [REDACTED] sent. Specific reasons for Captain [REDACTED] non-selection are not available because board proceedings are sensitive in nature and records of deliberations are not kept. It is our opinion that Captain [REDACTED] record simply was not competitive enough when viewed within the numerical constraints placed on the board.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
CAPT [REDACTED] USN [REDACTED]

5. The failure of select that Captain [REDACTED] received as a commander, while a part of his permanent record, does not "carry over" to his new grade. He is now a captain, who has no failures of select in his current grade. While the failure of select remains in the record, it is not an operative factor now, and does not impact on his status as a captain. There is no provision in law or regulation that requires or implies the implementation of that undesirable condition. Captain [REDACTED] will receive all considerations appropriate to his grade under the law and regulation. The fact that he was once failed of select is a correct and appropriate matter of record. Some program policies may make a stipulation that an officer "shall not be in a failed of select status" or contain similar language. This type of wording is no longer applicable to Captain [REDACTED] since he has not yet been considered for promotion to the next higher grade, and if he is considered and not selected, as a captain his promotion status becomes 'considered'. The promotion status of 'failed' applies only to officers in the grade of commander and below. Other program policy may contain the wording that stipulates that an officer "shall not have been failed of select to the next higher grade" or similar language. In this case, this stipulation may apply to Captain [REDACTED]. We do not find this an unjust condition or result in his case. These program stipulations are made by the program sponsors and approved by the CNO or Secretary and are waivable if the conditions warrant. We find no injustice or unfair action has occurred in Captain [REDACTED] case. The possible resultant limitations to some programs are a result of policy decisions, and not a result of improper or unjust action on the part of the FY-99 promotion selection board. We find no basis on which to recommend a finding in the petitioner's favor.

6. Captain [REDACTED] can be justifiably proud of his record and contributions; the negative response to his petition does not detract from his honorable service to this nation and the United States Navy.

[REDACTED]  
Director, Reserve Officer  
Promotions, Appointments, and  
Enlisted Advancement Division